

# Eviction Process

## Scenario:

1. Rent is due before the 1st of the month; the rental month ends on the last day of the month (28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup>, or 31<sup>st</sup> depending on the month)
2. Even though rent is payable in advance, most landlords give a grace period of one day, allowing the tenant to pay on the 1<sup>st</sup> of the month.
3. On the 2<sup>nd</sup> of the month, a landlord may start the demand notices required by the court. (3 Day Notice to Pay or Quit)
4. If the 3 Day Notice to Pay or Quit is hand delivered to the tenant, the 72 hours start as soon as the tenant receives the notice. If the 3 Day Notice to Pay or Quit is mailed by certificate of mail or certified mail, the seventy two hours starts at least 4 days after the notice is mailed. If there are any weekends or holidays within the 4 days, they do not count toward the 4 day. The seventy two hours may start as late as 7 to 9 days after the mailing. This is governed by court rules of procedure.
5. Worst case scenario, the tenant has now been in the rental unit 11 days without paying rent.
6. If the tenant has not paid after receiving the 3 Day Notice to Pay or Quit as described above, the landlord has to go to the clerk of the court to pick up court papers to start the next step in the process. The court papers can take up to 4 hours to complete, depending on the circumstances. The papers need to be filled out with each of the names of the tenants as listed on the rental contract. (This means husband, wife, significant other, etc.)
7. The court papers are then returned to the clerk of the court to await a judge's signature. At this point, the landlord has to pay the appropriate filing fees to the court, which typically cost about \$65.00.
8. After receiving the signed papers from the court, the landlord has to hire a process server to serve each individual named in the court papers for the lawsuit. (This process server can be a sheriff, constable, or anyone qualified to act as a process server.) It can take days for the process server to locate and hand deliver the court papers to each of the individuals named in the court papers for the lawsuit, if the individuals are still in the area and can be located.
9. If an individual cannot be located and served, the landlord is required by statute to publish a legal notice in a newspaper within that county for 30 days.
10. Assuming each individual has now been served, each individual has 10 days to respond to the court, not counting weekends and holidays, which can add up to 17 days to respond.
11. At the time the tenants' responses are received at the court, according to court rule, the court has 10 days, not counting weekends and holidays, to set a court date for action for possession only and 20 days, not counting weekends and

holidays, for possession and monetary judgments. This can add up to 17 days for possession only and 31 days for possession and monetary judgments.

12. Assuming that this is an action for possession and monetary judgment, the judge will hear the case in Justice Court. Normally these trials take about 2 hours.
13. The judge has 5 days, not counting weekends and holidays, to render a judgment. This can take up to 10 days.
14. Most courts, with the exception of Billings' courts, give the tenants an additional 10 days to 2 week to move. If the judgment issued requires the tenants to vacate on a Saturday, a landlord cannot get a sheriff or constable to execute the eviction on the weekend, allowing the tenant to stay passed the 10 days/2weeks additional occupancy allowed by the judge.
15. If the tenant becomes a holdover beyond the eviction date so the assistance of a sheriff or constable is requiring, the landlord will have to pay an additional Fee, up to \$110.00, for the sheriff or constable to assist. In addition, the sheriff and constable are not available every day of the week for this service. In some counties, they are only available one day a week for this service. In Cascade County, the sheriff is only available for this service on Thursdays, adding 4 additional days that the tenant is allowed to stay in the rental property without paying rent.
16. In the case where the tenants do not show up in court, the judge can issue a default judgment. The number of days the tenant can remain on the premises is the same as described above. In addition, any tenant who is evicted due to a default judgment has 30 additional days to demand the case be reheard. At the point in time the demand is made, the court procedure begins again at the point of notice. This means the tenant is given an additional period of holdover which can be in excess of a month.

The actual amount of time it takes for a landlord to gain possession of his rental premises depends on the above factors. For a diligent landlord the process can take up to 3 months and cost the landlord 3 month's rent, as well as court costs, administrative costs, process serving costs, and attorney fees, especially if it is held in a corporation, LLC, trust, etc.

